71-1451

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In The

Supreme Court of the United States

OCTOBER TERM, 1971

No.

In the Matter of
The New York, New Haven & Hartford Railroad Company, Debtor

LAWRENCE W. IANNOTTI, Successor Trustee Under the First and Refunding 4% Mortgage Bonds, dated as of July 1, 1947, of The New York, New Haven and Hartford Railroad Company, Debtor, *Petitioner*,

vs.

GEORGE P. BARKER, RICHARD C. BOND, JERVIS LANGDON, JR. and WILLARD WIRTZ, Trustees of the Property of Penn Central Transportation Company, Debtor; Manufacturers Hanover Trust, as Mortgage Trustee, and Penn Central Transportation Company, *Respondents*.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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THE MACK CO., NORTH HAVEN, CONN.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

OPINIONS BELOW

The decision of the United States Court of Appeals for the Second Circuit (hereinafter referred to as the "Court of Appeals") was issued on March 17, 1972. The decision is still unreported and has been reprinted at pages A-5-A-26 of the Appendix attached to the New Haven Trustee's petition for a writ of certiorari. In the interest of preserving the

assets of the New Haven estate, separate and redundant appendices have not been printed and reference is made to the single Appendix.

The Court of Appeals' decision reversed the decision entered by the United States District Court of Connecticut (hereinafter referred to as the "New Haven Reorganization Court"). That court's Memorandum of Decision is reported as *In re New York, New Haven & Hartford Railroad Co.*, 330 F. Supp. 131 (D. Conn. 1971); and its Order of Remand, reported as *In re New York, New Haven & Hartford Railroad Co.*, 331 F. Supp. 212 (D. Conn. 1971). The Memorandum of Decision is reprinted at pages A-26-A-61 and the Order of Remand at pages A-62-A-69 of the Appendix.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) (1970), and this petition is timely filed in accordance with 28 U.S.C. § 2101(c) (1970).

The Court of Appeals' decision was entered March 17, 1972, but its mandate has not issued because, on April 6, 1972, the Court of Appeals granted petitioner New Haven Trustee a thirty-day stay in which to file his petition for a writ of certiorari in accordance with Rule 41(b) of the Federal Rules of Appellate Procedure. Petitioner herein, though not a party to the Motion for a Stay of Mandate, has filed his petition for a writ of certiorari within the thirty-day period specified by Rule 41(b).

QUESTIONS PRESENTED

Following this Court's decision in the *New Haven Inclusion Cases*, 399 U.S. 392 (1970), the case was remanded to the New Haven Reorganization Court which entered an Order imposing an equitable lien and constructive trust upon the former New Haven assets conveyed to the Penn Central Transportation Company (hereinafter referred to as "Penn Central") as part of the New Haven's inclusion into the Penn Central. Upon appeal, the Court of Appeals reversed this decision on the grounds that the New Haven Reorganization Court lacked jurisdiction over the subject matter. The questions presented are:

1. Whether, in light of the Penn Central's filing of a petition of reorganization eight days prior to the entry of this Court's decision in the *New Haven Inclusion Cases*, the New Haven Reorganization Court retained jurisdiction, under Section 77(a) of the Bankruptcy Act, 11 U.S.C. § 205(a) (1970), § 5 of the Interstate Commerce Act, 49 U.S.C. § 5 (1970), and this Court's mandate, to impose an equitable lien and constructive trust to safeguard the constitutional rights of the New Haven bondholders or whether the Penn Central Reorganization Court in the Eastern District of Pennsylvania alone had jurisdiction over the subject matter.

2. Whether, under *Warren* vs. *Palmer*, 310 U.S. 132 (1940), the Court of Appeals erred in holding that exclusive jurisdiction over the New Haven reorganization now resides, and has resided since Penn Central filed its petition for reorganization, in the Penn Central Reorganization Court.

3. Whether the New Haven Reorganization Court acted in accordance with this Court's mandate.

4. Whether the Court of Appeals had jurisdiction to review the New Haven Reorganization Court's implementation of this Court's mandate or whether jurisdiction to construe its mandate resides in this Court alone.

STATEMENT OF THE CASE

On three prior occasions, various aspects of the Penn Central merger and the New Haven's inclusion into the Penn Central have come before this Court. *Baltimore & O. R. R. Co.* vs. *United States*, 386 U.S. 372 (1967); *Penn Central Merger & N. W. Inclusion Cases*, 389 U.S. 486 (1969); *New Haven Inclusion Cases*, 399 U.S. 392 (1970).

The New Haven has been in reorganization in the New Haven Reorganization Court since July 7, 1961, under Section 77 of the Bankruptcy Act. On December 2, 1968, the Interstate Commerce Commission (hereinafter referred to as the "ICC") certified a plan of reorganization to the New Haven Reorganization Court providing for the inclusion of the New Haven into the Penn Central. In light of the desperate state of the New Haven's finances, the filing of objections and the scheduling of a hearing were expedited. In Order No. 559, dated December 24, 1968, the New Haven Reorganization Court ordered the inclusion of the New Haven into the Penn Central effective December 31, 1968. See *New Haven Inclusion Cases, supra.* To permit speedy inclusion, Order No. 559 provided that the determination of the amount and the nature of the consideration to be paid by Penn Central for the New Haven assets would be postponed pending further litigation. The New Haven Reorganization Court retained jurisdiction to

decide the terms of the inclusion,[1] and, upon review of the ICC's findings as to the liquidation value of the former New Haven assets, held it was understated by approximately $29 million. Troubled by the disparity between the settled liquidation value of approximately $174 million and the uncertain value of the consideration proffered by the Penn Central, the New Haven Reorganization Court devised an underwriting plan designed to ensure that the New Haven estate received fair and equitable treatment and compensation in an amount which would protect the New Haven bondholders' rights under the Fifth Amendment of the United States Constitution. The court stated:

> "This court adheres to the position that due process and just compensation provisions of the Fifth Amendment prohibit the imposition of a further period of erosion of assets on the New Haven. It has ruled that any erosion additional to that accumulated through 1968 would be

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[1] Sections J and K of Order No. 559 provided as follows:

"J. The conveyance of the Debtor's assets by the New Haven Trustees and the payment of consideration by Penn Central Company, as provided herein, shall be without prejudice to the right of any party to contest the fairness and adequacy of the consideration and the other terms of the inclusion of the Debtor's operation in Penn Central Company.

"K. The Court hereby reserves jurisdiction to adjudicate all operations [sic] and claims for equitable treatment heretofore filed herein except that all objections to the inclusion of the Debtor's operations in Penn Central Company as of December 31, 1968 are hereby overruled and denied."

constitutionally impermissible as a taking without just compensation. . . .

"The nub of the unfairness and inequity is not the 87½ [the value credited to each share of Penn Central common stock] fixed for present calculations, but the fact that the purchaser is getting assets of sure present value while the seller is asked to gamble for its payment on the future of the Penn Central." *In re New York, New Haven & Hartford Railroad Co.*, 304 F. Supp. 793, 801, 809 (D. Conn. 1969).

Almost simultaneously, the ICC's evaluation was appealed to a three-judge District Court convened under § 5 of the Interstate Commerce Act to rule on the fairness of the terms of the Penn Central-New Haven merger. That court found that the ICC had underestimated the New Haven estate's value by approximately $990,000 and adopted the New Haven Reorganization Court's underwriting plan. *New York, N.H. & H. R.R. Co. First Mortgage 4% Bondholders' Committee* vs. *United States*, 305 F. Supp. 1049 (S.D.N.Y. 1969). Those decisions were then appealed to this Court.

In the *New Haven Inclusion Cases*, 399 U.S. 392 (1970), this Court held that the three-judge District Court should have deferred to the New Haven Reorganziation Court and affirmed the New Haven Reorganization Court's decision in all respects, including its determination that further erosion of the New Haven estate would violate the bondholders' constitutional rights, except that it found the underwriting plan to be unrealistic in light of the intervening Penn Central bankruptcy. The Court noted that the final decision regarding the consideration to be paid the New Haven estate would have to be reached thereafter by "the Commission and the appropriate

federal courts", 399 U.S. at 489, and the case was remanded to the New Haven Reorganization Court.

Upon remand, the New Haven Reorganization Court, acting pursuant to its jurisdiction under this Court's mandate and as a § 77 and a § 5 court, imposed an equitable lien upon the former New Haven assets and a constructive trust upon the excess income from the so-called Grand Central Terminal properties. Creation of these security devices was justified on the grounds that the New Haven estate required interim protection to ensure receipt of fair and equitable treatment and adequate compensation as required by the Constitution and this Court's decision. The New Haven Reorganization Court held:

> "This court has the exclusive jurisdiction to determine the effect of the Supreme Court's mandate in the *New Haven Inclusion Cases*, and this court must decide what is to be done to implement it. The full price required to be paid for the New Haven's assets was decided, but the terms of the payment were not; and this court alone must review and determine what means, pursuant to the Supreme Court's mandate, are proper. The I.C.C. cannot adjudicate the issues of law now before this court, for these lie outside its jurisdiction . . .
>
> "So here, the Commission has no jurisdiction to decide the legal questions of the New Haven's status, whether as that of a stockholder or creditor, including the type of creditor, and the further related question as to whether or not the New Haven estate has a full security interest in its former properties for the balance of the purchase price. These are legal questions which are for this court's determination in construing the Supreme Court's mandate. In the circumstances of this case ordinary sense and logic call for a resolution of these para-

mount issues before remand of the case to the I.C.C. in order that it may proceed with prior knowledge of how the legal questions have been adjudicated . . .

"It should clearly be borne in mind, however, that this court claims only the power to declare the existence of an equitable lien on the conveyed property, including a constructive trust to the extent of the capitalized value of one-half of the excess income from the Grand Central properties, for the balance due on the purchase price. With the property in the possession of the Trustees of the Penn Central and with the duties of operation resting on that company's Trustees, the New Haven reorganization court does not under present circumstances assert the power to enforce such a lien. The declaration of a lien will have no adverse impact on the ability of the Penn Central to operate as a railroad, and the Penn Central reorganization court will remain wholly in control of the effect, if any, of such a lien on the operations of the railroad and on its reorganization plan formulation. . . .

"It is this court's position that the nature and form (including whether or not it should be treated as secured) of the indebtedness of Penn Central to the New Haven for the assets transferred, long before Penn Central went into reorganization, and at a time when both the New Haven, as debtor, and Penn Central were solely under the jurisdiction of this court, are matters within the exclusive jurisdiction of this court. Both the New Haven and Penn Central reorganization courts have the duty and jurisdiction to protect the New Haven's constitutional right not to have the equity imposed security of the transferred properties further confiscated in the public interest. The Penn Central reorganization court has exclusive jurisdiction over any action by the New Haven Trustee to enforce his equitable lien and also over the

> form of the consideration and its time and manner of payment as they may be affected by a fair and equitable plan of reorganization of the Penn Central." 330 F. Supp. at 136-37, 141-42, A-28-A-29, A-30-A-31, A-39.

In light of the Penn Central Trustees' position that the New Haven should be content with what it had procured, the New Haven Reorganization Court emphasized that, absent some form of security, the intervening Penn Central bankruptcy would result in the Penn Central Trustees' receipt of the New Haven's former assets at a fraction of their worth. The Penn Central Trustees also maintained that they were empowered to use the former New Haven assets to run the Penn Central and to offset its operating losses. Under these circumstances, the likelihood of further erosion of the New Haven estate and the diminution of the New Haven bondholders' security prompted the New Haven Reorganization Court to take action which, as a court of equity, it felt in good conscience impelled to do. Declaration of the equitable lien and constructive trust was also justified as implementation of this Court's mandate and decision

Following the New Haven Reorganization Court's issuance of its Memorandum of Decision and one day prior to the entry of its Order of Remand, the Penn Central Reorganization Court entered its Order No. 296 enjoining the New Haven interests from enforcing any claim against Penn Central arising out of the New Haven inclusion and instructing the Penn Central Trustees to appear in the New Haven Reorganization Court to object to the entry of any order which would interfere with the Penn Central Reorganization Court's exercise of jurisdiction over its debtor. For reasons not relevant to this petition, Order No. 296 was remanded for modification by the

United States Court of Appeals for the Third Circuit, *In re Penn Central Transportation Co.*, Nos. 71-1582 and 71-1734 (3rd Cir. Jan. 3, 1972) (unreported). On remand, the injunctive provisions of Order No. 296 were continued and remain in effect.

On December 31, 1971, the Penn Central Reorganization Court entered Order No. 546, declaring a tentative lien, indeterminate in amount and priority, in favor of the New Haven estate. That Order, entered while the New Haven Reorganization Court's decision was on appeal to the Second Circuit, has been appealed to the Third Circuit on the ground that it constitutes an impermissible collateral attack on a decision of a court of concurrent jurisdiction.

On March 17, 1972, the Second Circuit reversed the New Haven Reorganization Court on the grounds that it had lacked subject matter jurisdiction to declare the equitable lien and constructive trust. The Court of Appeals held, in light of this Court's decision in *Warren* vs. *Palmer*, 310 U.S. 132 (1940), that the New Haven Reorganization Court's prior jurisdiction under § 77 and § 5, its *in personam* jurisdiction over the Penn Central Trustees, and its jurisdiction under this Court's mandate could not prevail in light of the literal language of § 77(a) vesting exclusive jurisdiction in the Penn Central Reorganization Court. The Court of Appeals commented, despite no such evidence in the record, that the declaration of an equitable lien and constructive trust could impair formulation of a plan of reorganization for the Penn Central. The Court of Appeals then remanded the case to the ICC where the New Haven reorganization would become a part of the larger Penn Central proceedings, review thereafter to be had only in the Penn Central Reorganization Court.

Judge Mansfield concurred in the remand to the ICC but dissented from so much of the Court of Appeals' decision as held that the New Haven Reorganization Court would no longer have a role in the determination of the amount and form of consideration to be paid for the former New Haven assets. His dissent capsulizes the basic tenants of petitioner's jurisdictional argument. Judge Mansfield pointed out that the New Haven Reorganization Court continues to function as a § 77 and § 5 court and "[a]s such it has a vital interest in the final determination of the terms and conditions of the New Haven's inclusion into the Penn Central." *Id.* at 2201, A-21. Turning to this Court's order of remand, Judge Mansfield noted that this Court did not remand to the Penn Central Reorganization Court, which it could have done under § 77(a) if the New Haven were to be treated merely as a subsidiary of the Penn Central. Judge Mansfield disagreed with the majority's interpretation of *Warren* vs. *Palmer* and noted that none of the considerations which governed that decision was present in this proceeding. After all, he noted, the New Haven Reorganization Court acquired possession under § 77 over the New Haven assets long before the Penn Central Reorganization Court; it reserved jurisdiction over precisely the issues involved in this litigation; and neither forum appears better equipped to determine the final terms and conditions of the New Haven's inclusion into the Penn Central. Finally, he emphasized that there was no reason to believe that the two reorganization courts would not cooperate in their review of a plan of reorganization for the two railroads and he stated his conviction that, when a plan of reorganization is formulated, ". . . the Supreme Court would appreciate having the recorded views of the Connecticut Court, which has be-

come a respected veteran in this protracted and complicated matter." *Id.* at 2205, A-24.

REASONS FOR GRANTING THE WRIT

Though its facts are unique, this case raises several difficult, general and far-reaching problems of bankruptcy law, railroad reorganization procedure, and federal procedure meriting this Court's attention. As another stage of the Penn Central merger and New Haven inclusion, which this Court has continually supervised to ensure fair and equitable treatment for all of the parties involved, the Court of Appeals' decision, if left undisturbed, may frustrate this Court's prior efforts and may further deplete the New Haven bondholders' security beyond constitutional limits. As a result, this Court's decision in the *New Haven Inclusion Cases* may prove an empty, unenforceable $174 million judgment.

I. Jurisdictional Issues

Although the question of the proper interrelationship between § 77 courts of concurrent jurisdiction has only arisen in this Court in *Warren* vs. *Palmer* and, by dictum, in *Benton* vs. *Callaway*, 165 F.2d 877, 882 (5th Cir. 1948), *aff'd*, 336 U.S. 132 (1949), resolution of the respective roles of the New Haven and Penn Central Reorganization Courts is a matter of great public importance. These two proceedings each involve hundreds of millions of dollars and the future of rail transportation in the Washington-Boston corridor. Furthermore, six major railroads in the northeastern part of the coun-

try[2] are presently in reorganization courts extending over three federal judicial circuits. The need for guidelines is pressing in light of the possibility of future conflicts.

Warren vs. *Palmer* remains the only yardstick fashioned by this Court to resolve jurisdictional disputes between § 77 courts. As Judge Mansfield noted, that case dealt with (1) leased lines, jurisdiction over which this Court held was governed by § 77(c)(6) of the Bankruptcy Act and (2) the need to concentrate responsibility for the physical operations of the lines in question. Neither of those factors obtains here. Unlike *Warren* vs. *Palmer*, the jurisdictional questions in this case cluster around § 77(a) and only one court here, the Penn Central Reorganization Court, oversees the operations of a functioning railroad. Furthermore, the Court of Appeals misconstrued *Warren* vs. *Palmer*, which left the two District Courts there considerable scope to exercise both their exclusive and concurrent jurisdiction. What this Court did not hold in *Warren* vs. *Palmer* was that the New Haven Reorganization Court, in that case, had pre-empted the field as the Court of Appeals apparently believed. The Court of Appeals' reliance upon the literal language of § 77(a) was equally misplaced, another aspect of the lesson of *Warren* vs. *Palmer* to which the Court of Appeals failed to give adequate weight. For, as this Court emphasized, § 77(a)'s language constitutes only the beginning of the inquiry.

Following the decision in *Warren* vs. *Palmer*, as the New Haven Reorganization Court noted in its Memorandum of De-

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[2] The Boston & Maine Railroad, the New Haven, Penn Central, the Reading Railroad, the Central Railroad of New Jersey, and the Lehigh Valley Railroad.

cision, cooperation between those two reorganization courts and, latterly, the Penn Central Reorganization Court resulted in the completion of the Boston & Providence reorganization. The Court of Appeals' decision is consonant, therefore, with neither the letter of *Warren* vs. *Palmer* nor the experience and needs of District Court judges sitting as reorganization courts.

The position taken by the New Haven Reorganization Court and by petitioner in the Court of Appeals, and which comports with *Warren* vs. *Palmer*, is that the Penn Central Reorganization Court has the responsibility of determining the priority of the New Haven estate's claim in the Penn Central reorganization proceedings and in deciding on a form of consideration for the former New Haven assets which will be fair to other Penn Central creditors. The New Haven Reorganization Court, on the other hand, must review the ICC's plan of reorganization for the two railroads in order to determine whether it is fair and equitable to the New Haven estate and its creditors. In addition to being consistent with *Warren* vs. *Palmer*, this view eliminates any jurisdictional conflict, though it does raise the possibility of a difference of opinion to be resolved on appeal. However, as Judge Mansfield noted, in all likelihood the two courts will cooperate. That responsibilities should be allocated along these lines is underscored by the fact that the New Haven Reorganization Court is the only court with jurisdiction to review the terms of the Penn Central-New Haven merger under § 5 of the

Interstate Commerce Act.[3] The merger aspects of this case notwithstanding, the facts reveal dramatically the basic questions of bankruptcy law which they raise — the outer bounds of a bankruptcy court's ability to dispossess another court of jurisdiction and the extent to which a prior reservation of jurisdiction, jurisdiction under a remand from a higher court, and *in personam* jurisdiction over the parties enable a court with previously existing jurisdiction to retain it.

This issue is not merely academic. The Penn Central reorganization is not proceeding either smoothly or swiftly, and both major creditors and the Penn Central Trustees themselves have expressed reservations about the likelihood the Penn Central can be reorganized. Dismissal of the reorganization is by no means impossible. If dismissal occurs, and the New Haven reorganization has been converted into a segment of the Penn Central proceeding, the Court of Appeals' decision would leave the New Haven reorganization in limbo. Return to the New Haven Reorganization Court would, in retrospect, have produced a wasteful and inefficient

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[3] In relevant part, § 5 provides that:

(d) The Commission shall have authority in the case of a proposed transaction under this paragraph involving a railroad or railroads, as a prerequisite to its approval of the proposed transaction, to require, *upon equitable terms,* the inclusion of another railroad or other railroads in the territory involved, upon petition by such railroad or railroads requesting such inclusion, and upon a finding that such inclusion is consistent with the public interest. (Emphasis added).

The three-judge court was convened pursuant to 28 U.S.C. § 2325 (1970).

transfer of jurisdiction, but that involves the heroic assumption jurisdiction would somehow revest. Retention of jurisdiction by the Penn Central Reorganization Court would be presumably untenable since the basis for its jurisdiction would have disappeared with the dismissal. The New Haven would be a railroad in reorganization without a reorganization court.

In general then, the outcome of the jurisdictional dispute in this case does not turn upon issues of fact. None of the courts which have passed on this issue has found as a matter of fact that the declaration of an equitable lien and constructive trust has interfered or will interfere with the Penn Central Trustees' operation of their railroad or the Penn Central Reorganization Court's proceedings. The Penn Central Trustees have not experienced any difficulties in disposing of real estate formerly owned by the New Haven and even the constructive trust on the excess income from the Grand Central Terminal properties has not produced operational difficulties for, as the Penn Central Trustees stated in petitioning for permission to sell some of the Grand Central real estate, the properties and income "are not required by the [Debtor's] Trustees in the operations of the Debtor's railroad or in the conduct of the Debtor's transportation business." Attachment to Order No. 605 (E.D. Pa. Mar. 13, 1972).

This case requires, therefore, a legal interpretation of § 77(a) and a decision which will mediate or eliminate future conflicts, which only this Court can provide.

II. Construction Of This Court's Mandate.

This case also raises several questions regarding the proper implementation of this Court's mandate, which provided that

the causes be "remanded to the United States District Court for the District of Connecticut for further proceedings in conformity with the opinion of this Court." The opinion thus became a part of the mandate. *Rogers* vs. *Hill,* 289 U.S. 582, 587 (1933). The New Haven Reorganization Court ruled that its decision merely restated and implemented this Court's mandate, that it was the proper forum because the ICC cannot adjudicate legal rights, and that the remand itself conferred jurisdiction. The Court of Appeals disagreed on all counts and held that the New Haven Reorganization Court was jurisdictionally unable to do more than forward the matter to the ICC. Resolution of this issue is vital because the Court of Appeals' decision would, if generally applied, limit the discretion and nullify the jurisdiction of District Courts on remand. To the extent prior case law exists, the Court of Appeals' decision is inconsistent with it. See *Textile Workers Union* vs. *Lincoln Mills,* 353 U.S. 448, 456-57 (1957); *Swann* vs. *Charlotte-Mecklenburg Bd. of Educ.,* 402 U.S. 1, 15-16 (1971). The breadth of a District Court's discretion and the imaginativeness with which it should fashion a remedy to enforce a decision by this Court are general problems of federal procedure and the management of the federal judicial system to which only this Court can provide definitive answers.

If the New Haven Reorganization Court was acting within its discretion in declaring an equitable lien and a constructive trust, then the opinion of the Court of Appeals raises yet another difficult question — whether it had jurisdiction to review and reverse the New Haven Reorganization Court or whether jurisdiction lies only in this Court. Petitioner submits that the New Haven Reorganization Court accurately read this Court's decision in the *New Haven Inclusion Cases*

to mean that the New Haven Reorganization Court's valuation was correct, that its underwriting plan had been undermined by intervening events, and that on remand it ought to design a new form of security device for the New Haven estate. Petitioner contended in the Court of Appeals that jurisdiction lay only in this Court and this position is consistent with an extensive line of case law. *Re Sanford Fork & Tool Co.*, 160 U.S. 247, 258 (1895); *Ohio Oil Co.* vs. *Thompson*, 120 F.2d 831, 834 (8th Cir.), *cert. denied*, 314 U.S. 658 (1941); see the remarkably similar case of *In re Chicago, M. St. P. & P. R.R. Co.*, 145 F.2d 299, 304 (7th Cir. 1944), *cert. denied sub. nom., Park* vs. *Group of Institutional Investors*, 318 U.S. 523 (1945). Again, the factual situation of this case poses dramatically the entire congeries of questions concerning the District Court's proper role on remand from this Court. Determination of the forum in which review of a District Court's actions upon remand is to be had is an important question of federal procedure which only this Court can resolve.

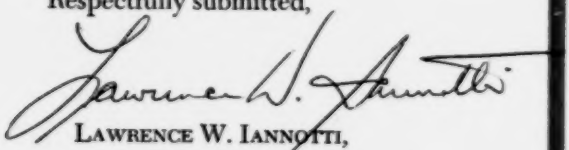
Finally, the New Haven Reorganization Court's Memorandum of Decision was based upon the postulate that judicial action was required since the ICC could not adjudicate the parties' legal rights. The Court of Appeals brushed this aspect of the New Haven Reorganization Court's decision aside, but the New Haven Reorganization Court's opinion raises an issue upon which this Court has not definitely spoken; namely, the jurisdictional relationship between an expert administrative agency and a reviewing court to adjudicate parties' legal rights. For if the New Haven Reorganization Court had jurisdiction under this Court's mandate and if the ICC is not empowered to pass upon legal issues, then the basic premise of the Court of Appeals decision is incorrect and a re-evaluation

of the interrelationship between court and commission needs to be undertaken, preferably by this Court.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Second Circuit.

Respectfully submitted,



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